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10/529,329	05/23/2005	Hendricus Antonius Hoogland	294-211 PC'D/US	8654
23869 7590 03/05/2009 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				
EXAMINER				
AYRES, TIMOTHY MICHAEL				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/529,329

Applicant(s)HOOGLAND, HENDRICUS
ANTONIUS**Examiner**

TIMOTHY M. AYRES

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-12, 19, 20 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-12, 19, 20 and 24-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office action replaces the office action mailed on 12/17/08 due to missed claim 27 and a new time period restarts upon the mailing of this office action.

Please note that there has been a change in examiners to the undersigned, Timothy M. Ayres and any questions should be directed thereto.

Claim Rejections—35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 27 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The disclosure does not expressly or inherently recite that the second supporting means are loosely retained by said cross-supports.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Regarding claims 12, the phrase "preferably" in line 3 renders the claim indefinite because it is unclear whether the limitation(s) following the phrases are part of the claimed invention. See MPEP § 2173.05(d). For the purposes of this examination, the limitations following the phrases "preferably" are not considered part of the claimed invention.

4. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 8 recites the broad recitation "between 5° and 175°", and the claim also recites "approximately 90°"

which is the narrower statement of the range/limitation. For the purposes of this examination, the narrower range is considered merely exemplary.

Claim Rejections—35 USC § 102

1. Claims 1-7, 10-12, 19, 20, 24, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 3,880,092 to Seeber. Seeber teaches a plastic pallet having a top deck supported by three stringers with bearing elements extending upward. A first support means (34) is parallel and in the same plane as the stringer. Second supporting means (30,28) are located in a second plane within the cross support. Please note that there presently is no language presented in the claims that defines the cross support, stringer, deck, and bearing elements to be formed as separate entities and therefore it is the portions of the plastic piece that define each element. Regarding claim 27, the cross support is molded about said second supporting means and is considered retained in a similar level and manner as disclosed in this application.

2. Claims 1-7, 10-12, 19, 20, 24, 25, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,735,154 to Hemery. Hemery teaches a plastic pallet having a top deck support by stringers (14, 44, 13) with bearing elements (8, 18, 28, 38, 48, 58, 68, 78, 88) extending upward. A first supporting means (10, B, C, D) are located in the same plane as the stringers. Second supporting means (10, A, E) are located

within cross supports in a second plane. Regarding claim 27, the second supporting means is slid into said cross support and is therefore considered to be loosely retained.

3. Claims 1-7, 10-12, 19, 20, 24, and 27 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,868,080 to Wyler. Wyler teaches a plastic pallet having a deck supported by three stingers with bearing extending upward. A first support means (32) is located in the bottom as seen in figure 11. A second support means (32) is located at the bottom of the deck as seen in figure 7E and 7B. In the specification Wyler states that such supporting elements as shown in individual configurations in the drawings can also be concurrently combined (Wyler '080, Col. 5, lines 56-61). Regarding claim 27, the second supporting means is slid into said cross support and is therefore considered to be loosely retained.

5. Claims 1-7, 10, 12, 19 and 20, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Apps, US patent 6,955,128. Apps teaches a pallet (10) having a top deck (12) and a bearing construction (14) both made of plastic (col. 5, lines 47-51); the bearing construction having stringers (136) extending in a longitudinal direction and having bearing elements (126) thereon, and cross supports (132) at right angles to the stringers; first (158,154) and second (160,161) supporting means, the first supporting means extending parallel to the stringers in the bearing construction and the second supporting means extending parallel to the cross supports.

Regarding claims 2–7, the first and second supporting means are manufactured from metal or plastic (col. 7, lines 8–15), prevent creep in the top deck and bearing construction, have a higher modulus of elasticity than the top deck and bearing construction, and enhance the rigidity of the top deck.

4. Claims 1-7, 10-12, 19, 20, 24, 25, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,622,642 to Ohanesian. Ohanesian teaches a plastic pallet having a top deck support by stingers (270) with bearing elements (310) extending upward. A first supporting means (120) are located in the same plane as the stringers. Second supporting means (120) are located within cross supports in a second plane and are perpendicular to said first support means.

Claim Rejections—35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 11 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps as applied to claim 10 above, and further in view of Koefeld. Apps discloses a pallet substantially as claimed, having supporting means confined in the plastic of a top deck and bearing construction, and teaches the use of an injection molding process in the construction of the pallet (col. 5, line 50), but does not specifically teach that the

supporting means are injection molded in the pallet. Koefeldt teaches a pallet (10) having a top deck (12) and bearing construction (14) molded from plastic, and supporting means (36, 38) substantially confined in the plastic of the top deck and bearing construction, further teaching that the supporting means are injection molded in the pallet (col. 4, lines 48–61). Thus Apps discloses a pallet upon which the claimed injection molding of the supporting means can be seen as an improvement, and Koefeldt teaches a comparable pallet improved in the same way as claimed. One of ordinary skill in the art could have applied the known injection molding, as taught by Koefeldt, in the same way to the pallet of Apps, with predictable results. Regarding claim 26, The Examiner is taking official notice that it is well known to add holes in reinforcing members that get covered in injected molded plastic so that the plastic bonds with plastic through the hole providing a more secure fit and less chance of the plastic peeling from the reinforcing member. Therefore at the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the pallet of Apps in view of Koefeldt by adding through holes in the reinforcing members to bond the plastic better.

Response to Arguments

5. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. While the Apps rejection remains, what elements are what has changed due to the amendment.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **TIMOTHY M. AYRES** whose telephone number is (571)272-8299. The examiner can normally be reached on **MON-THU 8:00 - 5:00**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M. A./
Examiner, Art Unit 3637
2/9/2009

/Janet M. Wilkens/
Primary Examiner, Art Unit 3637